

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

BASF AGRO B.V., ARNHEM (NL),
ZÜRICH BRANCH,

Plaintiff,

v.

MAKHTESHIM AGAN OF NORTH
AMERICA, INC., CONTROL
SOLUTIONS, INC., and DO IT
YOURSELF PEST CONTROL, INC.

Defendants.

C.A. No. 1:13-cv-00867-SCJ

**DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT
OR, IN THE ALTERNATIVE, TO TRANSFER VENUE**

Now come Defendants Makhteshim Agan of North America, Inc. ("MANA"), Control Solutions, Inc. ("CSI") and Do It Yourself Pest Control, Inc. ("DIY," collectively, "Defendants") and bring this motion to dismiss plaintiff's complaint for failure to state a claim, or, in the alternative to transfer venue. Fed. R. Civ. P. 12(b)(6); 28 U.S.C. § 1404(a). In support thereof, Defendants show as follows:

1.

Plaintiff BASF Agro B.V., Arnhem (NL), Zürich Branch ("BASF") brought

this patent infringement action against Defendants on March 19, 2013. BASF previously asserted the identical patent at issue in this action against MANA and CSI in a complaint filed in the United States District Court for the Middle District of North Carolina. That action was resolved by a Consent Judgment entered on October 27, 2010.

2.

For the reasons set forth in Defendants' memorandum filed herewith, Plaintiff's Complaint in this action is barred by the doctrine of claim preclusion and should be dismissed for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6).

3.

In the alternative, this action should be transferred to the Middle District of North Carolina, the court in which the original action for patent infringement was brought and the court in which BASF has instituted a pending contempt proceeding arising out of allegations that Defendants are infringing the patent at issue in this action.

4.

In support of this motion, Defendants tender – and ask that the Court take judicial notice of – the following documents of record in the North Carolina action:

- (a) Exhibit A – the Complaint filed by BASF; and
- (b) Exhibit B – Consent Judgment of October 27, 2010.

WHEREFORE, Defendants MANA, CSI, and DIY pray that their Motion to Dismiss Plaintiff's Complaint or, in the Alternative, to Transfer Venue be granted.

This the 19th day of April, 2013.

s/Kenton J. Coppage

Kenton J. Coppage

Georgia Bar No. 187190

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CERTIFICATE OF SERVICE AND TYPE SIZE COMPLIANCE

Pursuant to Local Rule 5.1C, NDGa. And Standing Order No. 04-01, the foregoing pleading is prepared in Times New Roman, 14 point, and was filed electronically with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

William Ragland, Esq.
Kenneth A. Gallo, Esq.
Kripa Raman, Esq.
Erin Wiggins, Esq.

This 19th day of April, 2013.

s/ Kenton J. Coppage
Kenton J. Coppage